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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,948	08/26/2003	Harvey Jay	J07-004	4553
<div><div>7590</div><div>08/25/2009</div><div>R. Neil Sudol 714 Colorado Avenue Bridgeport, CT 06605-1601</div></div>				
			<div>EXAMINER</div> <div>FARAH, AHMED M</div>	
			<div>ART UNIT</div> <div>3769</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>08/25/2009</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/647,948	<b>Applicant(s)</b> JAY, HARVEY	
	<b>Examiner</b> Ahmed M. Farah	<b>Art Unit</b> 3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 68,73-77,86,94,105,106,109-112 and 115-118 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 68,73-77,94,105,106,109-112 and 115-118 is/are rejected.
- 7) ☒ Claim(s) 86 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

*Note: for courtesy to the applicant, this Office Action is made Non-Final due to a forthcoming Interview scheduled for July 5, 2009 with the inventor, Dr. J. Harvey, and his attorney, R. Neil Sudol.*

### ***Specification***

The amendment filed March 13, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Electromagnetic radiation applied to the skin in spaced sessions as introduced into amended paragraph [0056] is a new matter into the disclosure.

Applicant is required to cancel the new matter or to clearly indicate in the reply to this Office Action the sections of the specification that support the added disclosure.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 68, 73-77, 94 and 105, 106, 109-112, and 115-118 are again rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,676,655 to McDaniel. McDaniel teaches a method that applies electromagnetic radiation (EMR) to tissue using electromagnetic radiation with wavelengths from about 300 nm to about 1600 nm, and pulse durations from about 0.1 femtoseconds to about 100 seconds, interpulse delays between from about 0.1 to about 1000 milliseconds, and the energy fluence received by said tissue is less than about 10 J/cm<sup>2</sup> (Col. 2, lines 28-34). These parameters overlap those of the Applicant's disclosure to achieve the claimed result and therefore must be interpreted as yielding the same results. McDaniel teaches intervals between treatments can be as long as hours, days, weeks, months, etc (Col. 17, lines 28-29), thus teaching periodic treatments. The method of treatment comprises the step exposing tissue to the light of the stated parameters (Col. 2, lines 25-27). McDaniel teaches the use of porphyrin as an excellent topical (exogenous) composition with superior optical properties for acting as a chromophore to enhance low- intensity light therapies (Col 22, line 33-37). The absorption of various wavelengths and selected chromophores and body structure is disclosed as a wavelength selection criteria.

Method claims must be examined by evaluation of the positively cited manipulative steps that are directly controllable by person doing the treatment. Periodically applying pulses of EMR is such a manipulative step. How the body or tissue reacts is controllable only by the selection of the parameters of the EMR. The specific intended function as a result of the radiation is interpreted by the examiner as a new use for a method of irradiation tissue with EMR. New use is not among categories of

patentable inventions specified in 35 U.S.C. § 101 (Ex parte PFEIFFER, 135 USPQ 31 (Bd. Pat. App. & Int. 1961).

The application of the EMR prior to, during or after exposure is not relevant as not positive step of exposing the tissue to Xray or ultraviolet radiation is cited. The actual manipulative step of applying would not be different at different times.

Regarding claim 77, the manner of exposure to Xray or ultraviolet radiation has no impact on the manipulative step.

Regarding claims 105 and 115, McDaniel teaches that ultrasound (mechanical wave energy) may be used therapeutically to interact directly with the agent or the agent-tissue complex to produce the desired damaged target tissues (to be used alone or in combination with laser or non-laser light sources)(Col. 6, line 66 to Col. 7 line 3).

Regarding claim 106, McDaniel discloses low energy electromagnetic fields can be used alone or in combination with photomodulation (Col. 15, lines 55-60).

Regarding claims 110 and 111, McDaniel uses LEDs as the EMR source and such would include at least the single wavelength of one of such LEDs.

Regarding claim 118, McDaniel clearly provides wavelengths that overlap those claimed.

### ***Allowable Subject Matter***

Claim 86 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/  
Primary Examiner, Art Unit 3769

June 20, 2006.